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2 **AHLANDER INJURY LAW**
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6 *Attorney for Plaintiff*

7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9
10 KEVIN McDERMOTT, individually,

11 Plaintiff,

12 v.

13 OTIS ELEVATOR COMPANY, a foreign
corporation; THE PEELE COMPANY
14 d/b/a PEELE DOOR, a foreign
corporation; SCHINDLER ELEVATOR
15 CORPORATION, a foreign corporation;
SCHINDLER ENTERPRISES, INC., a
16 foreign corporation; DOES I through X;
17 and ROE CORPORATIONS I through X,
18 inclusive,

19 Defendant.

Case No.: 2:22-cv-01654-GMN-NJK

**STIPULATION FOR DEFENDANT
OTIS ELEVATOR COMPANY TO
WITHDRAW ITS PARTIAL MOTION
TO DISMISS [ECF NO. 13] AND FOR
DEFENDANT SCHINDLER
ELEVATOR CORPORATION TO
WITHDRAW ITS JOINDER TO THE
PARTIAL MOTION TO DISMISS**

21 COMES NOW Plaintiff, KEVIN McDERMOTT ("Plaintiff"), by and through his attorney,
22 M. ERIK AHLANDER, ESQ. of AHLANDER INJURY LAW; and DEFENDANT OTIS
23 ELEVATOR COMPANY ("OTIS"), by and through its counsel of record, JARED P. GREEN,
24 ESQ. of BROWNE GREEN, LLC; and SCHINDLER ELEVATOR CORPORATION
25 ("SCHINDLER"), by and through its counsel of record, ALEXANDRIA L. LAYTON, ESQ. of
26 EVANS FEARS & SCHUTTERT, LLP and stipulate, subject to this Court's approval, for OTIS
27 to withdraw its pending Partial Motion To Dismiss [EDC No. 13] and for SCHINDLER to
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1 withdraw its pending Joinder to the Partial Motion to Dismiss [EDC 15] **on the terms set forth**
2 **herein.**

3 **PROCEDURAL POSTURE**

5 On October 20, 2022, Defendant OTIS filed its Partial Motion To Dismiss Plaintiff's
6 Causes Of Action For Damages and Punitive Damages [ECF No. 13]. On October 27, 2022,
7 Defendant, SCHINDLER filed its Joinder to the Partial Motion to Dismiss Plaintiff's Causes of
8 Action for Damages and Punitive Damages. As of the filing of this Stipulation, no other Motion
9 and no responsive pleading has been filed by any Defendant in this matter.

10 Pursuant to Local Rule 7-2(b), Plaintiff has until **November 3, 2022**, to respond to OTIS's
11 Partial Motion To Dismiss.

12 Pursuant to FRCP 15(a)(1)(B), Plaintiff may amend his Complaint as a matter of course on
13 or before **November 10, 2022**, *i.e.*, 21 days after service of the Partial Motion To Dismiss.

14 **TERMS OF STIPULATION**

15 Plaintiff, OTIS, and SCHINDLER therefore stipulate, subject to this Court's approval, that
16 Plaintiff will, on or before November 3, 2022, file his Amended Complaint. That [Proposed]
17 Amended Complaint is attached hereto as Exhibit 1.

18 Plaintiff, OTIS, and SCHINDLER further stipulate, subject to this Court's approval, that
19 OTIS's Partial Motion To Dismiss and SCHINDLER's related Joinder shall be deemed
20 withdrawn and moot as of the filing of the Amended Complaint.

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Plaintiff, OTIS, and SCHINDLER further stipulate, subject to this Court's approval, that neither this Stipulation nor the withdrawal and mooted of Otis's Partial Motion To Dismiss and the related Joinder shall in any way prejudice OTIS's or SHINDLER's ability to file any appropriate FRCP 12 Motion in response to the Amended Complaint, and OTIS and SCHINDLER expressly reserve their right to do so.

DATED this 3RD day of November, 2022. DATED this 3RD day of November, 2022

AHLANDER INJURY LAW

BROWNE GREEN, LLC

/s/ M. Erik Ahlander

/s/ Jared P. Green

M. Erik Ahlander, Esq.
Nevada Bar No. 9490
9183 W. Flamingo Rd., Ste. 110
Las Vegas, Nevada 89147
Attorney for Plaintiff

Jared P. Green, Esq.
Nevada Bar No. 10059
3755 Breakthrough Way, Suite 210
Las Vegas, Nevada 89135
*Attorneys for Defendant
Otis Elevator Company*

DATED this 3rd day of November,
2022

EVANS FEARS & SCHUTTERT, LLP

/s/ Alexandria L. Layton

Alexandria L. Layton, Esq.
Nevada Bar No. 14228
6720 Via Austi Parkway, Suite 300
Las Vegas, NV 89119
*Attorney for Defendant
Schindler Elevator Corporation*

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ORDER

IT IS ORDERED THAT, on or before November 3, 2022, Plaintiff shall file his Amended Complaint, submitted as Exhibit 1 to this Stipulation; and

IT IS FURTHER ORDERED THAT, as of the filing of Plaintiff's Amended Complaint, Defendant OTIS's pending Partial Motion To Dismiss [ECF No. 13] and SCHINDLER'S Joinder to the Partial Motion to Dismiss [ECF No. 15] shall be deemed withdrawn and moot, without prejudice as to OTIS's and SCHINDLER's ability to file any appropriate FRCP 12 Motion in response to Plaintiff's Amended Complaint.

IT IS SO ORDERED.

Dated this 3 day of November, 2022



Gloria M. Navarro, District Judge
UNITED STATES DISTRICT COURT

“Exhibit 1”

1 M. ERIK AHLANDER, ESQ.
2 Nevada Bar No. 9490
3 **AHLANDER INJURY LAW**
4 9183 W. Flamingo Rd., Ste. 110
5 Las Vegas, Nevada 89147
6 (702) 996-7400
7 erik@ahlanderinjurylaw.com
8 *Attorney for Plaintiff*

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 KEVIN McDERMOTT, individually,

12 Plaintiff,

13 v.

14 OTIS ELEVATOR COMPANY, a foreign
15 corporation; THE PEELLE COMPANY
16 d/b/a PEELLE DOOR, a foreign
17 corporation; SCHINDLER ELEVATOR
18 CORPORATION, a foreign corporation;
19 DOES I through X; and ROE
20 CORPORATIONS I through X, inclusive,

21 Defendant.

Case No.: 2:22-cv-01654-GMN-NJK

[PROPOSED] AMENDED COMPLAINT

[PROPOSED] AMENDED COMPLAINT

22 COMES NOW Plaintiff KEVIN McDERMOTT individually, by and through his attorney,
23 M. ERIK AHLANDER, ESQ. of AHLANDER INJURY LAW, and for his causes of action against
24 Defendants, and each of them, alleges as follows:

- 25 1. This Court has jurisdiction over this matter pursuant to Nev. Const. art. VI, Sec. 6,
26 as this Court has original jurisdiction in all cases not assigned to the justices' courts.
- 27 2. That at all times relevant to these proceedings, Plaintiff KEVIN McDERMOTT
28 ("Plaintiff") was and is a resident of the County of Clark, State of Nevada.
3. Defendant OTIS ELEVATOR COMPANY ("OTIS") is a corporation foreign to the
State of Nevada being duly organized and incorporated under the laws of the State of New Jersey,

1 but registered to do business in the State of Nevada and having its physical corporate address as One
2 Carrier Place, Farmington, Connecticut 06032.

3 4. Defendant THE PEELLE COMPANY d/b/a PEELLE DOOR ("PEELLE") is a
4 corporation foreign to the State of Nevada being duly organized and incorporated under the laws of
5 Canada, but registered to do business in the United States and having its United States physical
6 corporate address as 34 East Main Street, #372, Smithtown, NY 11787.

7 5. Defendant SCHINDLER ELEVATOR CORPORATION ("SCHINDLER
8 ELEVATOR") is a corporation foreign to the State of Nevada being duly organized and
9 incorporated under the laws of the State of Delaware, but registered to do business in the State of
10 Nevada and having its physical corporate address as 20 Whippany Road, Morristown, New Jersey
11 07960.

12 6. That the true names and capacities, whether individual, corporate, associate or
13 otherwise of Defendants named herein as DOES I through X and ROE CORPORATIONS I through
14 X are unknown to Plaintiff who therefore, sues said Defendants by said fictitious names. Plaintiff
15 is informed and believes and thereon alleges that each of the Defendants designated as DOES and
16 ROES are responsible in some manner for the events and happenings referred to, and caused
17 damages proximately to Plaintiff as herein alleged, and Plaintiff will ask leave of this Court to amend
18 his Complaint to insert the true names and capacities of DOES I through X and ROE
19 CORPORATIONS I through X when the same have been ascertained and to join such Defendants
20 in this action. At all times mentioned herein, each Defendant was acting as the agent, servant, and
21 employee of each other Defendant.

22 7. Does I through X and Roe Corporations I through X include the subsidiaries, parent
23 companies, successors and predecessors in interest, assignees, alter egos, or otherwise are liable for
24 the liabilities of Defendants, and each of them. At all times mentioned herein, each Defendant was
25 acting as the agent, servant, and employee of each other Defendant.

26 8. All Defendants have had such minimum contacts with the state of Nevada so as to
27 grant this Court jurisdiction over their person or entity, whether generally, or as a specific result of
28 the facts giving rise to this complaint.

1 9. At all times mentioned herein, Defendants OTIS and PEELLE were engaged in the
2 business of designing, manufacturing, and marketing elevators and safety screens for the general
3 public.

4 10. That OTIS and/or PEELLE designed, manufactured, and placed into the stream of
5 commerce a freight elevator and a safety screen, by selling and/or otherwise distributing the elevator
6 and screen prior to September 11, 2020, to non-party Caesars Palace Las Vegas Hotel and Casino
7 (“Caesars Palace”), located at 3570 S. Las Vegas Boulevard, Las Vegas, Nevada.

8 11. That prior to September 11, 2020, Defendants entered into a contract with each other
9 and/or with Caesars Palace to service and maintain the elevators and security screens located within
10 Caesars Palace, including the freight elevator commonly known as freight elevator #84 within that
11 premises.

12 12. Upon Defendants’ installation of freight elevator #84 and its security screen, it was
13 represented by Defendants, and each of them, to be safe and free from latent defects.

14 13. On or about September 11, 2020, Plaintiff, was working as a utility porter for Caesars
15 Palace and was attempting to enter elevator #84 for its intended purpose of transporting him on his
16 electric cart with other items.

17 14. As Plaintiff attempted to enter freight elevator #84, the outer safety screen to the
18 elevator suddenly and without warning closed down on him, causing him to sustain significant
19 injuries to right arm and shoulder.

20 15. As a result of Defendants, and each of them, and their acts or omissions, the right
21 safety screen prematurely closed before Plaintiff could enter the elevator as described above, causing
22 substantial bodily injury to Plaintiff.

23 16. As a result of the Defendants’ conduct, Plaintiff suffered severe bodily injuries that
24 will hereinafter be more fully described.

25 **FIRST CAUSE OF ACTION**

26 **Strict Product Liability, Defective Design, Manufacturer and/or Failure to Warn**

27 17. Plaintiff incorporates by this reference each and every allegation previously made in
28 this Complaint, as if fully set forth herein.

1 18. At all relevant times here, Defendants, OTIS and PEELLE, including but not limited
2 to all DOE and ROE Defendants, were in the business of designing, manufacturing, selling, and/or
3 marketing the freight elevator, with its safety screen, which was designed, marketed, and/or sold for
4 use by the general public, including Plaintiff, all with knowledge that the same would not be
5 inspected or tested by the purchaser or user for defects.

6 19. Defendants, OTIS and PEELLE placed the freight elevator, with its safety screen,
7 on the market and in the stream of commerce with the knowledge that the public would use the
8 product.

9 20. Before selling/distributing it to Caesars Palace, all Defendants maintained custody
10 and control of the product.

11 21. Plaintiff and/or other third parties were foreseeable users of the subject freight
12 elevator with its safety screen and relied upon its safety.

13 22. The subject elevator and its attached safety screen were defectively designed and
14 manufactured because its use resulted in a substantial and unreasonable likelihood of causing
15 physical injury that rendered the elevator unreasonably dangerous for its intended use.

16 23. That at all relevant times, Plaintiff sustained serious and debilitating injuries when,
17 suddenly and without warning, the elevator safety screen malfunctioned and closed on him due to
18 the defects contained therein.

19 24. The elevator, with its safety screen, was far more dangerous than an ordinary
20 consumer would expect and was unsuitable for its intended purpose.

21 25. Defendants failed to warn Plaintiff of defects associated with the elevator and its
22 safety screen.

23 26. Plaintiff was unaware of the dangerous propensities and defective conditions of the
24 elevator and its safety screen.

25 27. That Defendants, OTIS and PEELLE knew or should have known of the subject
26 elevator and its safety screen's defect which rendered it unreasonably dangerous at the time of
27 placing the elevator into the stream of commerce and failed to undertake measures to prohibit it
28 from entering into the stream of commerce and into the hands of users in the State of Nevada,

1 including warnings of the risks for the product failure, proper use and maintenance of the product
2 and proper inspection of the product for potential hazards and/or defects.

3 28. In committing the acts and/or omissions described herein, Defendants, OTIS and
4 PEELLE engaged in despicable conduct that subjected Plaintiff to cruel and unjust hardship with
5 conscious disregard of the rights of Plaintiff.

6 29. In committing the acts and/or omissions described herein, Defendants, OTIS and
7 PEELLE engaged in intentional misrepresentation, deception, and/or concealment of a material fact
8 known to Defendants, and each of them, with the intent to deprive Plaintiff of her rights and/or
9 property and/or to otherwise injure Plaintiff.

10 30. In committing the acts and/or omissions described herein, Defendants, OTIS and
11 PEELLE engaged in conduct which is intended to injure Plaintiff and/or despicable conduct which
12 is engaged in with a conscious disregard of the rights and/or safety of Plaintiff, and Plaintiff is
13 entitled to punitive damages for these actions of Defendants, OTIS and PEELLE.

14 31. In committing the actions and/or omissions described herein, Defendants, OTIS and
15 PEELLE acted and/or failed to act with knowledge of the probable harmful consequences of each
16 wrongful act and/or omission and with a willful and deliberate failure to act to avoid those
17 consequences.

18 32. As a direct and proximate result of the defective nature of the Product, and
19 Defendants' failure to warn of the defect, Plaintiff has suffered bodily injuries, pain and suffering,
20 disability, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization,
21 medical and nursing care and treatment, and loss of earning capacity. These losses are permanent
22 and continuing in nature and Plaintiff will continue to suffer these losses in the future, all to
23 Plaintiff's damage in a sum in excess of \$15,000.

24 33. That as a direct and proximate result of the aforementioned strict product liability of
25 Defendants, OTIS and PEELLE, Plaintiff has been required to engage the services of an attorney,
26 incurring attorney's fees and costs to bring this action.

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SECOND CAUSE OF ACTION

Negligence

34. Plaintiff incorporates by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

35. Defendants were negligent in the design, manufacture, installation, maintenance and/or service of the freight elevator and its safety screen. Defendants knew, or in the exercise of ordinary care should have known, that the elevator with its safety screen was defective and unreasonably dangerous to those persons likely to use the elevator for the purpose and in the manner for which it was intended to be used. One or more Defendants were negligent in the particulars set forth in this and the preceding paragraph and such negligence was a proximate cause of the occurrence in question.

36. Defendants, and each of them knew, or in the exercise of ordinary care should have known, of the means of designing and manufacturing a reasonably safe elevator and safety screen so as not to cause the safety screen to prematurely close before an elevator passenger had fully entered the elevator car, or, in the alternative, should have conducted a reasonable inspection, maintenance and/or service of the elevator and its safety screen. Further, such reasonable inspection, maintenance and/or service would have revealed that the elevator and its safety screen were dangerous for their intended use.

37. Defendants, and each of them, further, had actual knowledge of the means of design, manufacture, maintenance, installation and service of such an elevator and safety screen and related materials which would have prevented the safety screen from prematurely closing while the elevator was in proper use.

38. Notwithstanding this knowledge, Defendants, and each of them, failed to properly design, manufacture, install, maintain, and/or serve the elevator and its safety screen with safe materials or repairs to prevent the safety screen from prematurely closing and thus causing the subject incident.

39. Defendants, and each of them, owed Plaintiff the duty of reasonable care when it designed, manufactured, installed, inspected, maintained, serviced and/or marketed the elevator with

1 its safety screen.

2 40. One or more Defendants violated its duty and was negligent in the particulars set
3 forth above.

4 41. In committing the acts and/or omissions described herein, Defendants, and each of
5 them, engaged in despicable conduct that subjected Plaintiff to cruel and unjust hardship with
6 conscious disregard of the rights of Plaintiff.

7 42. In committing the acts and/or omissions described herein, Defendants, and each of
8 them, engaged in negligent misrepresentation, deception, and/or concealment of a material fact
9 known to Defendants, and each of them, and negligently deprived Plaintiff of his rights and
10 otherwise negligently injured Plaintiff.

11 43. Each of the above-mentioned acts or omissions was a proximate cause of the injuries
12 suffered by Plaintiff and caused damages to him in excess of \$15,000.

13 **THIRD CAUSE OF ACTION**

14 **Breach of Implied Warranty of Fitness for a Particular Purpose**

15 44. Plaintiff incorporates by this reference each and every allegation previously made in
16 this Complaint, as if fully set forth herein.

17 45. At the times mentioned in this action, Defendants, OTIS and PEELLE, and all other
18 DOE and ROE Defendants, designed and manufactured the elevator with its safety screen for use
19 by ultimate consumers such as Plaintiff.

20 46. On or about September 11, 2020, Plaintiff attempted to use the freight elevator and
21 its security screen in Caesars Palace, manufactured and designed by Defendants OTIS and PEELLE
22 for resale to ultimate consumers such as Caesars Palace for use by Plaintiff. Further, the elevator
23 and its safety screen was delivered to Caesars Palace in its original production condition before the
24 ultimate sale and installation of the elevator tire to Caesars Palace for use by Plaintiff.

25 47. On or about September 11, 2020, the subject elevator's safety screen, while being
26 used for its intended use, suddenly and without warning and as a result of the Defendants' acts and/or
27 omissions, prematurely closed down on top of Plaintiff. Thus, contrary to the express and implied
28 warranties given by Defendants, OTIS and PEELLE, the elevator with its safety screen was not fit

1 for its intended use, rendering the elevator in question unreasonably dangerous.

2 48. Defendants OTIS and PEELLE impliedly warranted that the freight elevator was fit
3 for use, the purpose for which it was designed, and that it was a safe and suitable elevator to be used
4 for transporting employees and freight items, and that the elevator was fit and suitable for the use in
5 fact made by Plaintiff.

6 49. In using the elevator with its safety screen, Plaintiff specifically relied on
7 Defendants' judgment and skill, and the implied warranty of fitness for the particular purpose for
8 which Plaintiff used the elevator.

9 50. The Defendants, OTIS and PEELLE, by and through the sale of the elevator in
10 question to Caesars Palace, expressly and impliedly warranted to the public generally, and to the
11 Plaintiff specifically, that the elevator and its incorporated materials were fit for the purposes for
12 which they were intended.

13 51. That the elevator with its safety screen was not fit for use for its intended and
14 represented purpose, and as a result of Defendants OTIS and PEELLE's breach of warranty of
15 fitness of the elevator, Plaintiff sustained substantial bodily injury as stated above. Further, that the
16 above-mentioned defects rendered the elevator unreasonably dangerous and a proximate cause and
17 a producing cause of the incident in question and the resulting injuries suffered by Plaintiff. Further,
18 the Defendants' conduct was done knowingly.

19 52. In committing the acts and/or omissions described herein, Defendants, OTIS and
20 PEELLE engaged in despicable conduct that subjected Plaintiff to cruel and unjust hardship with
21 conscious disregard of the rights of Plaintiff.

22 53. In committing the acts and/or omissions described herein, Defendants, OTIS and
23 PEELLE engaged in intentional misrepresentation, deception, and/or concealment of a material fact
24 known to Defendants, and each of them, with the intent to deprive Plaintiff of his rights and/or
25 property and/or to otherwise injure Plaintiff.

26 54. In committing the acts and/or omissions described herein, Defendants, OTIS and
27 PEELLE engaged in conduct which was intended to injure Plaintiff and/or despicable conduct which
28 was engaged in with a conscious disregard of the rights and/or safety of Plaintiff, and Plaintiff is

1 entitled to punitive damages for these actions of Defendants, OTIS and PEELLE

2 55. In committing the actions and/or omissions described herein, Defendants, OTIS and
3 PEELLE acted and/or failed to act with knowledge of the probable harmful consequences of each
4 wrongful act and/or omission and with a willful and deliberate failure to act to avoid those
5 consequences.

6 WHEREFORE Plaintiff, expressly reserving the right to amend his Complaint at the time
7 of trial of the actions herein to include all items of damages not yet ascertained, individually,
8 demands judgment against Defendants as follows:

- 9 1. General damages in an amount in excess of \$15,000;
- 10 2. Damages for costs of medical care and treatment and costs incidental therein,
11 when the same have been fully ascertained;
- 12 3. Punitive damages in an amount to be determined at trial against Defendants OTIS
13 and PEELLE.
- 14 4. For reasonable attorneys' fees and costs of suit incurred herein; and,
- 15 5. For such other and further relief as the Court may deem proper.

16 DATED this _____ day of November, 2022.

17 **AHLANDER INJURY LAW**

18
19 _____
20 M. ERIK AHLANDER, ESQ.
21 Nevada Bar No. 9490
22 9183 W. Flamingo Rd., Ste. 110
23 Las Vegas, Nevada 89147
24 *Attorney for Plaintiff*
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **STIPULATION FOR DEFENDANT OTIS ELEVATOR COMPANY TO WITHDRAW ITS PARTIAL MOTION TO DISMISS [ECF NO. 13] AND FOR DEFENDANT SCHINDLER ELEVATOR CORPORATION TO WITHDRAW ITS JOINDER TO THE PARTIAL MOTION TO DISMISS** was served on counsel of record this 3rd day of November, 2022 using the Court's CM/ECF System.

/s/ Victoria DiBlasi
An employee of AHLANDER INJURY LAW